

## § 5.52

board of directors or as a senior executive officer may assume the office following the end of the review period, which begins on the technically complete notice date, unless:

(i) The OCC issues a notice of disapproval during the review period; or

(ii) The national bank does not provide additional information within the time period required by the OCC pursuant to paragraph (e)(3) of this section and the OCC deems the notice to be abandoned pursuant to § 5.13(c).

(8) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, 5.11, and 5.13 (a) through (f) do not apply to a notice for a change in directors and senior executive officers.

(f) *Appeal*—(1) If the national bank, the proposed individual, or both, disagree with a disapproval, they may seek review by appealing the disapproval to the Comptroller, or an authorized delegate, within 15 days of the receipt of the notice of disapproval. The national bank or the individual may appeal on the grounds that the reasons for disapproval are contrary to fact or insufficient to justify disapproval. The appellant shall submit all documents and written arguments that the appellant wishes to be considered in support of the appeal.

(2) The Comptroller, or an authorized delegate, may designate an appellate official who was not previously involved in the decision leading to the appeal at issue. The Comptroller, an authorized delegate, or the appellate official considers all information submitted with the original notice, the material before the OCC official who made the initial decision, and any information submitted by the appellant at the time of the appeal.

(3) The Comptroller, an authorized delegate, or the appellate official shall independently determine whether the reasons given for the disapproval are contrary to fact or insufficient to justify the disapproval. If either is determined to be the case, the Comptroller, an authorized delegate, or the appellate official may reverse the disapproval.

(4) Upon completion of the review, the Comptroller, an authorized delegate, or the appellate official shall notify the appellant in writing of the de-

cision. If the original decision is reversed, the individual may assume the position in the bank for which he or she was proposed.

[61 FR 60363, Nov. 27, 1996, as amended at 64 FR 60098, Nov. 4, 1999]

## § 5.52 Change of address.

(a) *Authority.* 12 U.S.C. 93a, 161, and 481.

(b) *Scope.* This section describes the obligation of a national bank to notify the OCC of any change in its address. However, no notice is required if the change in address results from a transaction approved under this part.

(c) *Notice process.* Any national bank with a change in the address of its main office or in its post office box shall send a written notice to the appropriate district office.

(d) *Exceptions to rules of general applicability.* Sections 5.8, 5.9, 5.10, 5.11, and 5.13 do not apply to changes in a national bank's address.

## § 5.53 Change in asset composition.

(a) *Authority.* 12 U.S.C. 93a, 1818.

(b) *Scope.* This section requires a national bank to obtain the approval of the OCC before changing the composition of all, or substantially all, of its assets through sales or other dispositions, or, having sold or disposed of all, or substantially all, of its assets, through subsequent purchases or other acquisitions or other expansions of its operations. This section does not apply to a change in composition of all, or substantially all, of a bank's assets that the bank undertakes in response to direction from the OCC (*e.g.*, in an enforcement action pursuant to 12 U.S.C. 1818) or as part of a voluntary liquidation pursuant to 12 U.S.C. 181 and 182 and 12 CFR 5.48, if the liquidating bank has stipulated in its notice of liquidation to the OCC that its liquidation will be completed, the bank dissolved and its charter returned to the OCC within one year of the date it filed this notice, unless the OCC extends the time period. This section does not apply to changes in asset composition that occur as a result of a bank's ordinary and ongoing business of originating and securitizing loans.

(c) *Approval requirement.* (1) A national bank must file an application

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and obtain the prior written approval of the OCC before changing the composition of all, or substantially all, of its assets (i) through sales or other dispositions, or, (ii) having sold or disposed of all or substantially all of its assets, through subsequent purchases or other acquisitions or other expansions of its operations.

(2) In determining whether to approve an application under paragraph (c)(1) of this section, the OCC will consider the purpose of the transaction, its impact on the safety and soundness of the bank, and any effect on the bank's customers. The OCC may deny the application if the transaction would have a negative effect in any of these respects. The OCC's review of any change in asset composition through purchase or other acquisition or other expansions of its operations under paragraph (c)(1)(ii) of this section will include, in addition to the foregoing factors, the factors governing the organization of a bank under § 5.20.

(d) *Exceptions to Rules of General Applicability.* Sections 5.8, 5.10, and 5.11 do not apply with respect to applications filed pursuant to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that some or all of the provisions of §§ 5.8, 5.10, and 5.11 apply.

[69 FR 50297, Aug. 16, 2004]

### Subpart E—Payment of Dividends

#### § 5.60 Authority, scope, and exceptions to rules of general applicability.

(a) *Authority.* 12 U.S.C. 56, 60, and 93a.

(b) *Scope.* Except as otherwise provided, the restrictions in this subpart apply to the declaration and payment of all dividends by a national bank, including dividends paid in property. However, the provisions contained in § 5.64 do not apply to dividends paid in stock of the bank.

(c) *Exceptions to the rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to this subpart.

#### § 5.61 Definitions.

For the purposes of subpart E, the following definitions apply:

(a) *Capital stock, capital surplus, and permanent capital* have the same meaning as set forth in § 5.46.

(b) *Retained net income* means the net income of a specified period less the total amount of all dividends declared in that period.

#### § 5.62 Date of declaration of dividend.

A national bank shall use the date a dividend is declared for the purposes of determining compliance with this subpart.

#### § 5.63 Capital limitation under 12 U.S.C. 56.

(a) *General limitation.* Except as provided by 12 U.S.C. 59 and § 5.46, a national bank may not withdraw, or permit to be withdrawn, either in the form of a dividend or otherwise, any portion of its permanent capital. Further, a national bank may not declare a dividend in excess of undivided profits.

(b) *Preferred stock.* The provisions of 12 U.S.C. 56 do not apply to dividends on preferred stock. However, if the undivided profits of the national bank are not sufficient to cover a proposed dividend on preferred stock, the proposed dividend constitutes a reduction in capital subject to 12 U.S.C. 59 and § 5.46.

#### § 5.64 Earnings limitation under 12 U.S.C. 60.

(a) *Definitions.* As used in this section, the term “current year” means the calendar year in which a national bank declared, or proposes to declare, a dividend. The term “current year minus one” means the year immediately preceding the current year. The term “current year minus two” means the year that is two years prior to the current year. The term “current year minus three” means the year that is three years prior to the current year. The term “current year minus four” means the year that is four years prior to the current year.

(b) *Dividends from undivided profits.* Subject to 12 U.S.C. 56 and this subpart, the directors of a national bank may declare and pay dividends of so much of the undivided profits as they judge to be expedient.

(c) *Earnings limitations under 12 U.S.C. 60—(1) General rule.* For purposes of 12 U.S.C. 60, unless approved by the OCC